

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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|-------------------------------------|---|----------------------|
| In the Matter of |) | |
| |) | |
| Amendment of the Commission's Rules |) | WT Docket No. 04-344 |
| Regarding Maritime Automatic |) | |
| Identification Systems |) | |
| |) | |
| Petition for Rule Making Filed by |) | RM-10821 |
| National Telecommunications and |) | |
| Information Administration |) | |
| |) | |
| Emergency Petition for Declaratory |) | |
| Ruling Filed by MariTEL |) | |
| |) | |
| Amendment of the Commission's Rules |) | PR Docket No. 92-257 |
| Concerning Maritime Communications |) | |

Reply Comments

Warren C. Havens ("Havens"), Telesaurus VPC LLC ("TVL"), Telesaurus Holdings GB, LLC ("THL"), AMTS Consortium LLC ("ACL"), and Intelligent Transportation & Monitoring Wireless LLC ("ITL") (together the "Parties")¹ hereby submit reply comments. The Parties hold Inland VPC Licenses.²

Summary

(1) The Parties, with respect to the Inland VPC licenses they hold, voluntarily seek to support any Federal wireless programs, including USGC and NTIA programs, that are clearly in the public interest, including by donations of

¹ Telesaurus VPC LLC, Telesaurus Holdings GB LLC, and Warren Havens each hold one or more Inland VPC licenses. Havens is the controlling interest holder in each LLC mentioned above. The plans of these LLCs are interrelated, and the VPC licenses and plans affect the other assets and plans of these LLCs. Thus, each party is filing these Reply Comments.

² REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULE MAKING AND FOURTH MEMORANDUM OPINION AND ORDER, FCC 06-108, Released July 24, 2006.

spectrum, but without giving up property and due process rights they have as holders of said licenses.

(2) The Parties refer here to a proceeding in which they have presented clear evidence of extensive rule violations in Auction 61 application and bidding (for AMTS public coast licenses: the sister band of VPC) by Maritime Communications/Land Mobile LLC (“MCLM”) in which Donald DePriest is a controlling person. He is also the person in control of MariTEL. This is presented here since, if, upon final adjudication before the FCC or a court, this evidence is accepted, then as the Parties requested in the Auction 61 proceedings, Mr. DePriest and companies he controlled may properly be found under the Communication Act and FCC rules to be disqualified as FCC licensees. If such disqualification was found, then the Parties believe it would have retroactive affect to this AIS proceeding, due to the timing of the rule violations involved, which was during the course of this proceeding.³ Unless the Parties introduced this information and disqualification possibility here, then the FCC may later find such evidence untimely or otherwise unacceptable. This evidence is newly obtained by the Parties, could not have been obtained earlier, and is based upon failures by MCLM and Mr. Depriest to disclose required information and supplying false information and certifications to the FCC. Thus, this matter is timely presented here.

³ The Parties do not suggest here that the day-to-day management of MariTEL whom they have dealt with are involved in any of the rule violations the Parties attribute to Mr. DePriest. Also, the Parties do not suggest here any party that relied upon MariTEL’s representations and warranties in any contract with MariTEL including to obtain VPC spectrum—where such party is not in fact implicated in any such rule violations—is not entitled to the benefits of such contracts.

(3) The FCC should at this time impose an appropriate sanction, based on its ruling in 1999 denying the Maritel-DePriest Petition to Deny all VPC Auction long forms and finding such filing sanctionable: the current sanction should be to grant the relief the USCG and NTIA seek in this proceeding for AIS with respect to the MariTEL VPC spectrum. This would be a fair sanction in the public interest (apart from the possible future results and retroactive application described in item 2 below).

1. The Parties' Inland VPC Spectrum

The Parties already have plans to donate to a nonprofit foundation a substantial percentage of their 200 and 900 MHz licensed spectrum held nearly nationwide for purposes of major concern to Federal entities, including Intelligent Transportation Systems, emergency wireless, and supplemental wireless for public agencies and critical infrastructure.⁴ They are not opposed to doing likewise regarding an AIS VPC channel, including by charitable donation directly to one or more Federal entities, if after discussion they understand that there is a legitimate need now or in the future, and subject to receiving a legitimate tax donation for the fair value of the donation and other reasonable business arrangements.

⁴ See, e.g., www.telesaurus.com. As a further example, the Parties made a formal presentation to the Forestry Communication Conservation Association, at its recent annual meeting, that included proposed use at no charge or profit to State or Federal agencies of some of their spectrum, including their VPC spectrum, along with the Daniels Electronics analog/P25 base stations and accompanying mobile radios currently in operation on all their VPC licenses (said base stations are in specially configured quick-deployment rugged cases, as used by the National Interagency Fire Center in Boise Idaho). The Parties obtained the base stations in this expensive configuration (far exceeding the cost of base stations not so configured) specifically to offer such nonprofit use to State and Federal agencies for use in emergencies or other special situations. The Parties obtained favorable feedback from some FCCA members, and stand by their proposal.

Is it the Parties understanding that, when they purchased their Inland VPC licenses from the FCC, there were no encumbrances on said Inland VPC spectrum with regard to current or future AIS use or potential seizure of any Inland VPC spectrum for AIS or any other purpose. Thus, the Parties do not believe that now, without violating the Constitution's Fifth Amendment, with regard to due process in seizing property as well as seizing property without fair compensation, that Inland VPC spectrum can be taken from them as contemplated in this proceeding. Again, however, a critical business plan goal of the Parties is to fulfill major high-public-interest goals of Federal agencies with all of their FCC licenses, and to actively work with Federal agencies for such purposes, including by donations to nonprofit organizations as noted above, or possibly in the case of a VPC channel for AIS, donation directly to a Federal agency or agencies. (The Parties have proposed to MariTEL that they do likewise, but they do not control MariTel or the assignee of much of the MariTEL VPC spectrum, Motorola.)

2. MariTEL's Controlling Person:
Evidence and Proceeding in Auction 61
Relevant to MariTEL Licensee Qualification

The reason for introducing this information at this time in this proceeding is described in the Summary above. The Parties refer to all of the Parties' filings regarding File No. 0002303355 including their Petition to Deny, Petition for Reconsideration, filings on the alleged Amendment, and all other filings to date, and filings regarding this Application in the future as expected (the "Auction 61 Pleadings"). This file number is a long-form application in Auction 61, for AMTS public coast licenses, allegedly by Maritime Communications/ Land Mobile LLC

("MCLM") that is controlled by Sandra and Donald Depriest. Mr. Depriest is the husband of Sandra Depriest (husband and wife, under auction rules, are deemed to share control in license applications) and is also an officer in MCLM and in an entity that controls MCLM, and otherwise is a controlling party in MCLM. Mr. Depriest also has at all times since MariTEL obtained geographic VPC licenses been the controlling party in MariTEL (including by holding rights to the controlling voting interest, and also by being the Chairman of the Board, as well by other controlling relations). The Parties positions expressed in the Auction 61 Pleadings include that, based on the magnitude of the rule violations for which the evidence is clear, which include sustained fraud, that the MCLM and its persons in control are disqualified under applicable law to hold or control FCC licenses.⁵ Since the same person controls MariTEL, the Parties assert that MariTEL is not qualified to hold VPC licenses.⁶ The evidence in the Auction 61 Pleadings, some obtained very recently, could not have been earlier presented in this proceeding.

3. Appropriate Sanctions:
Grant the USCG and NTIA AIS Position
with Regard to MariTEL VPC Spectrum

⁵ To date, FCC staff at the Division level has not found this. However, the Parties believe that such staff clearly violated due process (under applicable FCC Rules, the APA, the Communications Act, the First Amendment right to petition the government, and well established case law), and such staff did in fact ignore critical evidence presented. The Parties believe that on appeal within the Commission or to a court, which they will seek, that their position will prevail.

⁶ To the extent that any affiliate or other party with a relation with Mr. or Mrs. Depriest, MCLM, and its predecessor Mobex, took part in or knowingly benefited from such actions in violation of FCC rules, such parties may also be disqualified from holding FCC licenses.

This matter is introduced in the Summary above. The referenced 1999 Order is the MO&O, DA 99-962, released 5-19-99 (the “1999 Order”). In this 1999 Order, the FCC stated:

We issue a stern warning to MariTEL and future auction participants that pleadings that appear designed to delay a bidder's payment obligation or avoid a payment obligation imposed by the Commission's competitive bidding rules (*e.g.*, bid withdrawal or default payments) will be closely scrutinized for sanctionable conduct. We reserve the right to take enforcement action against MariTEL for its actions in this case. [Underling added.]

The FCC imposes enforcement sanctions on parties for rule violations including to maintain the integrity of its processes and for damages caused to the FCC as a regulatory body, including wasted time and costs in a frivolous proceeding. The MariTEL petition to deny resolved by the 1999 Order resoundingly against MariTEL, due to the defense of the Parties (Havens, a member of the Parties), was blatantly frivolous, an abuse of process, hurt the auction process, and damaged both the other auction participants, the FCC, and intended users of VPC spectrum including for AIS purposes.

The FCC reserved the right to sanction MariTEL, and it should fairly do so that this time, by granting the USCG and NITA AIS position in this proceeding regard to MariTEL VPC spectrum.

Respectfully submitted,

[Submitted electronically. Signature on File.]

Warren Havens, President
Telesaurus VPC LLC
Telesaurus Holdings GB LLC
AMTS Consortium LLC
Intelligent Transportation & Monitoring Wireless LLC
2649 Benvenue Ave., #2-3
Berkeley, CA 94704
Ph: 510-841-2220

27 November 2006